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ProEquities

July 10, 2006

Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File No. SR-NASD-2004-183
Release No. 34-54023; Proposed NASD Rule 2821 -- Members' Responsibilities Regarding Deferred Variable Annuities

Dear Ms. Morris:

ProEquities, Inc. ("ProEquities" or "the Firm"), a registered broker/dealer firm, is submitting these comments on proposed NASD Rule 2821, which addresses deferred variable annuity sales practices (the "Proposed Rule").

I. Overview

ProEquities believes that the Proposed Rule is a significant improvement over both the deferred variable annuity rule as proposed in 2005 (the "2005 Proposal") and the deferred variable annuity rule as proposed in 2004 (the "2004 Proposal"). It is clear that the NASD and the SEC have carefully reviewed and considered the numerous comments on the 2005 Proposal and 2004 Proposal submitted by the investing public, broker/dealers, insurance companies, and other interested parties. In particular, ProEquities strongly supports the provisions in the Proposed Rule that:

- Apply the Proposed Rule to only the purchase of a deferred variable annuity, the exchange of a deferred variable annuity for another deferred variable annuity, and the related subaccount allocations (while applying Rule 2310 to subsequent investments, the customer's sale of a deferred variable annuity, the customer's exchange of a deferred variable annuity for another product, and subaccount reallocations);

- Exempt from application of the Proposed Rule deferred variable annuities sold to certain tax-qualified, employer-sponsored retirement or benefit plans;

- Require the member firm or its associated person to have a reasonable basis to believe that the customer has been informed of the material features of a deferred variable annuity in general (rather than the product-specific disclosure contemplated by the 2005 Proposal);
- Delete the 2005 Proposal's "bright line test" that the customer have a long-term investment objective;

- Delete the 2005 Proposal's requirement that the member firm or its associated person to have a reasonable basis to believe that the customer has "a need for the features of a deferred variable annuity as compared with other investment vehicles";

- Delete the 2005 Proposal's requirement that the member firm establish standards for age, liquidity needs and dollar amounts; and

- Extend the Proposed Rule's effective date until 180 days following publication of the *Notice to Members* announcing SEC approval.

The Firm's remaining comments and concerns regarding the Proposed Rule are discussed below.

II. Features of Deferred Variable Annuity

Proposed Rule 2821(b)(1)(B) would require the member or an associated person to have a reasonable basis to believe that "the customer would benefit from the unique features of a deferred variable annuity (e.g. tax-deferred growth, annuitization or a death benefit)." Similarly, Proposed Rule 2821(c)(1)(A) would require a registered principal to consider "the extent to which the customer would benefit from the unique features of a deferred variable annuity (e.g. tax-deferred growth, annuitization or a death benefit)." These provisions would be modest improvements over the 2005 Proposal's requirement that the customer have "a need for the features of a deferred variable annuity as compared with other investment vehicles", but are still vague and confusing. For instance, all customers "would benefit" to some extent from tax deferral, an annuitization provision, or a death benefit, so the required determination by the member or associated person would have little meaning. Furthermore, the phrase "unique features" is misleading at best, since the "features" of a deferred variable annuity can be found in other products as well. For example, deferral of taxation on capital appreciation of a mutual fund, stock or bond until sale of the security is a type of tax deferral; annuitization is a feature of fixed and immediate variable annuities; and death benefits are common features of numerous insurance products (including variable universal life insurance).

ProEquities does not believe that the suggested language adds anything to the ultimate requirement that the transaction be suitable or to the nature of the suitability review by a registered principal, and recommends that it be deleted. In the alternative, ProEquities recommends that Proposed Rule 2821(b)(1)(B) and 2821(c)(1)(A) each be revised to delete the word "unique".

III. Customer Information

Proposed Rule 2821(b)(2) would require the member or an associated person to make a reasonable effort to obtain, among other things, information about the customer's "financial situation and needs" and the "intended use of the deferred variable annuity." These phrases are vague and would confuse members, associated persons and investors. Since the customer is also asked to provide information about liquid net worth, investments, insurance, and liquidity needs, it is unclear what "financial situation and needs" is designed to address. Deferred variable annuities are investment contracts with insurance features, and can be "used" for almost any investment-related purpose (other than, perhaps, as a reserve for short-term or emergency funds). If this requirement is retained, the final rule (or guidance published with adoption of the final rule) should clarify the type of information to be obtained. Are such "uses" as "retirement savings", "long term savings", "estate planning", "tax deferral", "principal preservation with upside potential", "minimum monthly benefits" or "potential annuity stream" adequate, or does the Proposed Rule contemplate some type of narrative disclosure? The Firm believes that these requirements should be deleted; if they are retained, the SEC or NASD needs to provide guidance on the meaning of the terms and the types of "uses" that it believes are appropriate.

IV. Timing of Principal Review

Proposed Rule 2821(c)(1) would require a registered principal to determine whether "he or she approves the purchase or exchange of the deferred variable annuity" "[n]o later than *two business days* following the date when a member or person associated with a member transmits a customer's application...to the issuing insurance company (emphasis supplied)." ProEquities believes that this requirement will result in undue burdens on many member firms and in unnecessary disruption and delays of legitimate transactions.

In the typical deferred variable annuity purchase, the customer gives the member firm the documentation required by the member firm and the issuing insurance company, and a check payable to the insurance company for the amount of the purchase. In order to comply with the SEC's net capital rule (Rule 15c3-1), many member firms (including ProEquities) must transmit these customer funds to the insurance company by noon of the business day after the day on which the member firm received the funds. Therefore, under the Proposed Rule, if the member firm received the relevant documentation (and the customer's check) on a Monday (for example), it would be required to send it to the insurer by noon on Tuesday and would be required to make a determination regarding suitability of the transaction by the close of business on Thursday. In practice, this would require the registered principal to make the suitability determination within three business days after receipt of the customer's application.

In the Firm's experience, most questions about a securities transaction are best addressed through discussions and additional correspondence with the registered representative and/or the customer. It often takes several days for the registered principal, representative and customer to get in contact with each other, collect and transmit any additional information requested by the principal, and address the outstanding concerns. Any unexpected delays in this process (such as illness or travel of the customer, the need to get information from third parties, or additional disclosures to the customer) could easily mean that the registered principal would have to accept the transaction (on incomplete information) or reject it (even if it proved to be entirely suitable) before the end of the third business day after the member received the customer application. Neither result is in the best interest of the customer.

ProEquities believes that the member firm should be allowed to complete the registered principal review "within a reasonable period of time following the date when a member or person associated with a member transmits a customer's application...to the issuing insurance company." If the NASD insists upon a fixed date, the Firm suggests five business days after the application is submitted to the insurer. Finally, if the NASD decides to retain a fixed date standard, the Firm strongly suggests permitting the Firm to complete the principal review after such fixed date, if it can demonstrate (and documents) that the registered principal attempted to finalize review of the trade within the two business day period, and the delay was due to the need to get additional information or to provide additional disclosures.

V. Principal Review of Non-Recommended Trades

Proposed Rule 2821(c)(1) would require a registered principal to determine whether "he or she approves the purchase or exchange of the deferred variable annuity," even if the proposed trade had not been recommended by the member. This proposed principal review requirement for trades that were not recommended by the member firm would impose a new, unwarranted suitability determination on members and their registered principals, and would be impractical to implement. Proposed Rules 2821(b)(1) and (c)(2) provide, collectively, that if the member or an associated person has recommended a purchase or exchange, the associated person will produce and sign a suitability determination document that a registered principal can review. If the member or associated person did not recommend the purchase or exchange, this suitability determination document is not (and should not be) required. Without such a document, or other similar documentation provided by the customer, conduct of a meaningful registered principal review will be difficult or impossible. As a practical matter, the registered principal will have no basis on which to "approve" the transaction, and would therefore be likely to reject it. This, in turn, would effectively prohibit a customer from making an independent, non-recommended decision to purchase or exchange a deferred variable annuity. The NASD should not adopt a rule that would, if effect, restrict customers from making their own decisions about how to invest their money.

If the NASD believes that a registered principal should review non-recommended deferred variable annuity transactions, the Firm recommends that the principal should be able to indicate that the trade had not been recommended by the member firm (or its associated persons) and that the principal was merely agreeing to allow the transaction to proceed as requested by the customer (and was not determining that the trade was "suitable").

The Firm also notes that current NASD Conduct Rule 2310(a) generally requires the member to make a suitability determination only if the member recommended the trade. The NASD and SEC should not impose a new, burdensome suitability determination on non-recommended transactions, as set forth in the Proposed Rule. If the NASD and SEC believe that this course of action is appropriate, we recommend that the NASD and SEC revisit the suitability requirements of Rule 2310(a) in a broad-based rulemaking, and not impose additional standards for suitability review on a single product.

VI. Principal Review—Previous Exchanges

Proposed Rule 2821(c) (and the related supervisory procedures set forth in Proposed Rule 2821(d)) would require the registered principal who is reviewing the exchange of a deferred variable annuity to consider, among other things, whether "the customer's account has had another deferred variable annuity exchange within the preceding 36 months." In addition, the supervisory procedures set forth in Proposed Rule 2821(d) (but not the provisions of Proposed Rule 2821(c)) would require a registered principal who is reviewing the exchange of a deferred variable annuity to consider, among other things, whether "the associated person effecting the exchange has a particularly high rate of effecting deferred variable annuity exchanges." Both of these standards are vague and are of questionable value in assessing the suitability of a particular transaction.

The Firm believes that it is unnecessary and impractical to review the rate of exchanges by a particular customer, or in an associated person's customer base, every time a customer submits an exchange transaction. This type of exception report is more appropriately used on a periodic basis (for example, once a quarter) to determine whether there are any trends in an associated person's business practices that need to be reviewed. Of course, if the reports do create a "red flag", special supervision of the associated person's business may be in order. As a general matter, however, the Firm believes that running such a report after each exchange transaction is submitted is not a cost-effective method to review these transactions, and would not significantly improve the supervision thereof.

If these requirements are retained, the Proposed Rule needs to be clarified. With respect to the first standard, does the customer's "account" refer to the customer's history with the member, or does it include transactions that occurred at another member firm? Does it refer to only the deferred variable annuity being exchanged, or to other deferred variable annuities (or variable universal life insurance policies) that the customer may own? Does it include other accounts to which the customer is a party, such as joint accounts, custodial accounts, or IRA accounts?

With respect to the second standard, what does "rate of...exchanges" mean? Does it refer to a percentage of the associated person's total deferred variable annuity transactions? Does it refer to a percentage of the associated person's customer base, or to a percentage of assets invested in variable annuities? Over what period is the "rate" to be measured? Does it matter if the previous transactions were clearly appropriate, under the highest standard of review? Finally, what is a "particularly high rate" of exchanges? There is no reason to believe that a given rate of exchanges at one member firm is less likely (or more likely) to be inappropriate than the same rate of exchanges at a different member. If the SEC and the NASD believe that, in general, a given "rate of exchanges" should be subject to special scrutiny, then they should clearly defined the standards and announce what those standards are. Member firms could then apply uniform standards to these trade review practices.

VII. Conclusion

As noted above, the Firm appreciates the careful consideration that has been given to proposed changes the deferred variable annuity rule. We hope that these comments will assist the NASD and SEC in its deliberations. If you wish to discuss the Proposed Rule, this letter, or any thoughts, comments, questions or suggestions that you may have, please call me at (205)268-5144.

Very truly yours,

PROEQUITIES, INC.

By: _____
Michael J. Mungenast
President

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